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**DISTRICT COURT
CLARK COUNTY, NEVADA**

JOSE DECASTRO,

Plaintiff,

VS.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT; STATE OF NEVADA;
BRANDEN BOURQUE; JASON TORREY; C.
DINGLE; B. SORENSEN; JESSE
SANDOVAL; OFFICER DOOLITTLE and
DOES 1 to 50, inclusive,

Defendants.

Case Number:
2:23-cv-00580-APG-EJY

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S EMERGENCY MOTION
TO RECONSIDER MOTION FOR
PRELIMINARY INJUNCTION TO STAY
STATE PROCEEDINGS**

Defendants Las Vegas Metropolitan Police Department (“LVMPD”), Ofc. Torrey, Ofc. Bourque, Ofc. Dingle, Ofc. Sorenson, Ofc. Sandoval and Ofc. Doolittle (“LVMPD Defendants”), by and through their attorneys of record, Marquis Aurbach, hereby file an Opposition to Plaintiff’s Emergency Motion to Reconsider Motion for Preliminary Injunction to Stay State Proceedings (ECF No. 22).

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This Opposition is made and based upon the attached Memorandum of Points and Authorities, all papers and pleadings on file herein, and any oral argument permitted by the Court during a hearing on this matter.

Dated this 20th day of June, 2023.

MARQUIS AURBACH

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff filed his Emergency Motion for Preliminary Injunction to Stay State Proceedings on June 8, 2023. *See* ECF No. 18. On June 12, 2023, this Court issued an Order denying Plaintiff's Emergency Motion for Preliminary Injunction. *See* ECF No. 19. The next day, Plaintiff filed his Emergency Motion to Reconsider Motion for Preliminary Injunction to Stay State Proceedings. *See* ECF No. 22. The Defendants now respond to the reconsideration motion.

Federal law states that reconsideration is only permitted when there is *substantially new evidence* or the decision is *clearly erroneous*. It is well established that a motion for reconsideration “may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation.” *Hupe v. Mani*, 2017 WL 1128598, *1 (D. Nev. March 24, 2017) (citation omitted). Plaintiff has failed to articulate in his Emergency Motion to Reconsider Motion for Preliminary Injunction to Stay State Proceedings that there is substantially new evidence present that would require the Court’s reconsideration, or that the Court’s decision was clearly erroneous. Instead, he merely reiterates the same arguments

1 that have already been raised before the Court and improperly mischaracterizes the law to fit
 2 such arguments. Accordingly, the Court should deny Plaintiff's motion for reconsideration.

3 **II. STATEMENT OF FACTS**

4 **A. RELEVANT FACTS AND PROCEDURAL HISTORY.**

5 This is a 42 U.S.C. § 1983 lawsuit in which Plaintiff alleges he was forcibly arrested
 6 while attempting to videotape a traffic stop. ECF No. 2 at 1. Plaintiff's Nevada state law criminal
 7 charges are currently pending in Nevada state court. ECF No. 18 at 2. According to Plaintiff, a
 8 preliminary hearing on the criminal charges was held on June 13, 2023. Prior to that hearing,
 9 Plaintiff filed an Emergency Motion for Preliminary Injunction asking this Court to stay the
 10 Nevada state law criminal proceedings. ECF No. 18.

11 **B. THE COURT'S ORDER.**

12 The Court issued its Order denying Plaintiff's Motion for Preliminary Injunction on June
 13 12, 2023, drawing on the *Younger*¹ abstention doctrine, which require federal courts to abstain
 14 from interfering with state court criminal proceedings absent exceptional circumstances.
 15 Plaintiff's requested relief was to stay the June 13, 2023, hearing in state court. See ECF No. 19
 16 at 1:14-15. At this point, Plaintiff's first hearing in the state criminal proceeding is passed, and
 17 yet it appears that Plaintiff's ability to assert his constitutional rights remains intact.

18 As this Court has recognized in its Order, Plaintiff makes continuous, unsubstantiated
 19 claims that he will be subjected to excessive force and even "death in a corrupt jail," which
 20 Plaintiff claims would make it impossible to raise constitutional challenges in his state case. See
 21 ECF No. 19 and 22 at 3:4-5. Specifically, the Court notes that Plaintiff "gives no reason to
 22 suggest that he will be jailed or why excessive force would be used against him if he is." See
 23 ECF No. 19 at 2:14-16.

24 **C. PLAINTIFF'S MOTION FOR RECONSIDERATION.**

25 In Plaintiff's current motion for reconsideration, Plaintiff still fails to provide a sufficient
 26 basis as to why his constitutional rights would be chilled in state court, or why he would be

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 28 ¹ *Younger v. Harris*, 401 U.S. 37 (1971).

1 subjected to excessive force or even death if he were to be imprisoned. Instead, he continues to
 2 make conclusory statements that are not based on fact, but rather on Plaintiff's assumptions. As
 3 such, his motion for reconsideration should be denied.

4 **III. LEGAL ARGUMENT**

5 **A. LEGAL STANDARD.**

6 Fed. R. Civ. P. 60(b) "permits a district court to reconsider and amend a previous order,"
 7 however "the rule offers an extraordinary remedy, to be used sparingly in the interests of finality
 8 and conservation of judicial resources." *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003)
 9 (internal quotations omitted)). A motion for reconsideration is not the proper vehicle for
 10 rehashing old arguments and is "not intended to give an unhappy litigant one additional chance
 11 to sway the judge." *Moraga v. Wolfson*, 2019 WL 11707395, *1 (D. Nev. Oct. 10, 2019)
 12 (citation omitted). A motion for reconsideration "should not be granted, absent highly unusual
 13 circumstances." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880
 14 (9th Cir. 2009). "Reconsideration is appropriate if the district court (1) is presented with newly
 15 discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or
 16 (3) if there is an intervening change in controlling law." *Moraga v. Wolfson*, 2019 WL
 17 11707395, *1 (D. Nev. Oct. 10, 2019) (citing *School Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255,
 18 1263 (9th Cir. 1993)).

19 **B. PLAINTIFF FAILS TO SATISFY HIS BURDEN UNDER THE
 20 RECONSIDERATION STANDARD.**

21 This Court's Order denying Plaintiff's Motion recognized that "federal courts should
 22 usually abstain from interfering with state court criminal proceedings." ECF No. 19 at 1 (citing
 23 *Younger*, at 37. In particular, courts should not act to restrain a criminal prosecution when the
 24 moving party has an adequate remedy at law and will not suffer irreparable injury if denied
 25 equitable relief. *Younger*, at 43. In other words, there should be no interference except where the
 26 danger of irreparable loss is both "great and immediate." *Id.* The standard to allow interference
 27 in a state criminal proceeding because is stringent no individual is immune from the good faith
 28 prosecution of his/her alleged criminal acts.

1 Plaintiff's reconsideration motion includes the same arguments raised in its initial
 2 briefing, and merely cited back to his original motion as the sole evidentiary support for the
 3 motion for reconsideration. It does not contain "some valid reason why the court should
 4 reconsider its prior decision" or set "forth facts or law of a strongly convincing nature to
 5 persuade the court to reverse its prior decision." *Frasure v. United States*, 256 F.Supp.2d 1180,
 6 1183 (D. Nev. 2003). The reconsideration motion does not include newly discovered evidence,
 7 designation of clear error, or an intervening change in controlling law. *See e.g., Sch. Dist. No. 1J*,
 8 5 F.3d at 1263.

9 Here, Plaintiff's entire motion relies exclusively on his prior arguments already made
 10 before this Court. Additionally, Plaintiff misstates the law throughout his motion. Specifically, in
 11 response to the Court's reasoning that Plaintiff failed to provide a reason to suggest that he
 12 would be jailed, he responded by incorrectly stating that misdemeanors carry a maximum jail
 13 time of six (6) months, as if that were the only consequence available to him. *See* ECF No. 22 at
 14 3:9-10.

15 NRS 193.150 provides that:

- 16 1. Every person convicted of a misdemeanor shall be punished by imprisonment in the county
 jail for not more than 6 months, or by a fine of not more than \$1,000, or by both fine and
 imprisonment, unless the statute in force at the time of commission of such misdemeanor
 prescribed a different penalty.
- 17 2. In lieu of all or a part of the punishment which may be imposed pursuant to subsection 1, the
 convicted person may be sentenced to perform a fixed period of community service pursuant to
 the conditions prescribed in NRS 176.087.

21 Thus, based on the plain reading of the statute, persons convicted of a misdemeanor shall
 22 be punished by imprisonment or by a fine of no more than \$1,000.00, or a combination of both.
 23 Jail time for misdemeanors is not mandated by statute, as Plaintiff implies in his motion. The
 24 state court could simply require Plaintiff to pay a fine and not impose any jail time. Therefore,
 25 Defendants agree with the Court's initial determination when it concluded Plaintiff has given no
 26 reason to suggest he will be jailed because Plaintiff has once again failed to adequately explain
 27 why he believes he will be required to serve jail time.

1 **C. EVEN IF THE COURT RECONSIDERS PLAINTIFF'S MOTION, HE
2 HAS NOT SHOWN THAT HE WILL SUFFER IRREPARABLE HARM
TO WARRANT THE ISSUANCE OF A PRELIMINARY INJUNCTION.**

3 In order for the Court to issue a preliminary injunction, Plaintiff must have shown he
4 would suffer irreparable injury that is both great and immediate if such equitable relief is denied.
5 Plaintiff has failed to articulate sufficient reasons why he would be unable to raise his
6 constitutional claims in state court. Just like in *Younger* where the Court concluded the defendant
7 was not entitled to equitable relief because the injury the defendant faced was solely incidental to
8 criminal proceedings brought lawfully in good faith, the same argument could be made here.
9 Plaintiff's criminal proceedings in state court were not brought in bad faith, or as a result of a
10 series of repeated prosecutions against him.

11 Furthermore, Plaintiff hangs his entire argument on the fact that First Amendment rights
12 would be chilled if the state criminal proceeding was not stayed. However, the *Younger* court
13 itself stated that even a "chilling effect" does not by itself justify federal intervention. *Younger*,
14 401 U.S. at 50. Moreover, that even the existence of a chilling effect "in the area of First
15 Amendment rights, has never been considered a sufficient basis, in and of itself, for prohibiting
16 state action." *Id.* at 51. Therefore, even if the Court decides to reconsider Plaintiff's original
17 motion for a preliminary injunction, he has not proven beyond his own mere speculation that he
18 would suffer immediate irreparable harm in the absence of a preliminary injunction.

19 In addition, Plaintiff relies on a few cases to argue a preliminary injunction is not held to
20 the *Younger* standard if charges have not yet been filed. *See* ECF No. 22 at 2:15-17. Plaintiff
21 further argues his criminal action is not pending and therefore his case should not be held to that
22 standard. *Id.* However, this is incorrect, as his case is pending in state court because he does have
23 formal charges against him for (1) Obstructing a Public Officer under NRS 197.190; and (2)
24 Resisting a Public Officer under NRS 199.280, which Plaintiff himself has acknowledged. *See*
25 ECF No. 18 at 2:7-8. Consequently, this argument fails.

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IV. CONCLUSION

Based on the foregoing, LVMPD Defendants respectfully request the Court denies Plaintiff's Emergency Motion to Reconsider Motion for Preliminary Injunction to Stay State Proceedings.

Dated this 20th day of June, 2023.

MARQUIS AURBACH

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **DEFENDANTS LVMPD, OFC. TORREY, OFC. BOURQUE, OFC. DINGLE, OFC. SORENSEN, OFC. SANDOVAL AND OFC. DOOLITTLE'S OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION TO RECONSIDER MOTION FOR PRELIMINARY INJUNCTION TO STAY STATE PROCEEDINGS** with the Clerk of the Court for the United States District Court by using the court's CM/ECF system on the 20th day of June, 2023.

I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants: N/A

s/Sherri Mong
an employee of Marquis Aurbach